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EXAMINER	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/559,723	KAWAMURA ET AL.	
	Examiner	Art Unit	
	SHARICK NAQI	3769	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *22 September 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-7,9-25,27,29 and 30* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-7,9-25,27,29 and 30* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

The Examiner acknowledges the response filed September 22, 2008.

Note to Applicant Regarding Claim Interpretation

The phrase "operable to" in the claim(s) may be interpreted as intended use. Intended use/functional language does not require that reference specifically teach the intended use of the element. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. The Examiner has placed the phrase “operable to” in italics, see below, for those instances where this interpretation applies.

Claim Objections

Claim 2 is objected to because of the following informalities: lines 2-3 of claim 2 state, “ . . . measurement instruments further a clock device . . .” and this appears to be a typographical error. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-7, 9-25, 27 and 29-30 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The Examiner is unable to find support in the original disclosure for the newly added limitation in independent claims 1, 20, 24, 25, 27 and 29 of indicating/presenting "*using contour lines on a map*, a geographical distribution of epidemic degrees of the infection". The dependent claims are rejected based on their dependence on the rejected independent claims.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-7, 9-25, 27 and 29-30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Independent claims 1, 20, 24, 25, 27 and 29, all contain limitations that states indicating/presenting "*using contour lines on a map*, a geographical distribution of epidemic degrees of the infection". It is unclear to the examiner how the geographical distribution of epidemic degrees of the infection is indicated/presented using "contour lines on a map". The dependent claims are rejected based on their dependence on the rejected independent claims.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-7, 11, 19-25, 27 and 29-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Blants et al. US Patent No. 6,231,519 (hereinafter Blants).

1. A vital data utilization system comprising:

a server *(Figures 1-3, element 130 Server, column 4, lines 10-67, column 5 lines 1-64)*;

a receiving apparatus *(Figures 1-3, element 130 Server, column 4, lines 10-67, column 5 lines 1-64)*; and

a plurality of measurement instruments *(Element 110 or 210)*, wherein said server, said receiving apparatus and said measurement instruments are connected via a communication network (*Figures 1-3, column 4, lines 10-67, column 5 lines 1-64*),

wherein each of said measurement instruments includes:

a vital data measurement device *operable to* measure vital data of a subject, the vital sign data serving as an indicator of infection (*Figures 1-3, column 4, lines 10-67, column 5 lines 1-64. PEF Meter measures data indicative of asthmatic reactions and asthmatic reactions result from a variety of factors including infection, see definition of*

asthma as extrinsic evidence at http://www.thefreedictionary.com/Asthma. Thus the PEF data is capable of serving as an indicator of infection); and

a sending device *operable to* send, to said server, the measured vital data (*Figures 1-3, column 4, lines 10-67, column 5 lines 1-64. Element 110 is a two way mobile data communication tool*),

wherein said server includes:

a receiving device *operable to* receive a plurality of vital data including the measured vital data, the plurality of vital data being received from said plurality of measurement instruments (*Figures 1-3, column 4, lines 10-67, column 5 lines 1-64. Server receives data sent over communication network*);

a storage device *operable to* store each vital data of the plurality of received vital data, each vital data being stored in association with **at least one of** (i) measurement position information indicating a position of a respective measurement instrument of said plurality of measurement instruments (*Figures 1-3, column 4, lines 10-67, column 5 lines 1-64. GPS location, pulmonary function and time/date data assembled and analyzed at a database 330*) and (ii) residence information indicating a position of a respective residence of a subject at which the respective measurement instrument is placed;

a database making device *operable to* store the plurality of received vital data into said storage device and *operable to* make a database including the plurality of received vital data, each respective vital data of the plurality received of vital data being stored in the database in association with at least one of the (i) measurement position

information (*Figures 1-3, column 4, lines 10-67, column 5 lines 1-64. GPS location, pulmonary function and time/date data assembled and analyzed at a database 330*) and (ii) residence information;

a value-added information making device *operable to* process each respective vital data stored in the database for each respective subject identified in the database, the processing being based on the **at least one of** the (i) measurement position information and (ii) residence information, associated with each respective vital data stored in the database and *operable to* make, from the processed vital data, value-added information indicating, using contour lines on a map, a geographical distribution of epidemic degrees of the infection indicated by each respective vital data stored in the database (*Figures 1-3, column 4, lines 10-67, column 5 lines 1-64. Data assembled from individual users includes physiological data and location data in the server is analyzed to be representative of any predetermined area. Data is used to create Asthma Cluster Type risk maps showing high risk locations. As explained earlier in the rejection, Asthma reactions are also caused by infections and a dictionary definition of "epidemic" is a widespread occurrence of a disease (www.thefreedictionary.com/epidemic) so the Asthma Cluster Type risk maps showing high occurrence of asthmatic reactions in certain areas is equivalent to value added information indicating geographic distribution of epidemic degrees of infection*); and

a value-added information providing device *operable to* provide said receiving apparatus with the value-added information (*Figures 1-3, column 4, lines 10-67, column*

5 lines 1-64. Data assembled and analyzed to be representative of any predetermined area then provided for output to users, public and ecologist), and

wherein said receiving apparatus includes

an output device *operable to* receive the value-added information provided by said value-added information providing device, and *operable to* present and output using contour lines on the map, the geographical distribution of the epidemic degrees of the infection (*Figures 1-3, column 4, lines 10-67, column 5 lines 1-64. Data assembled and analyzed to be representative of any predetermined area then provided for output and presentation to users, public and officials 370, for example via TV or Internet as Asthma Cluster Type risk maps*).

2. The vital data utilization system according to claim 1,

Wherein each measurement instrument of said measurement instruments further

a clock device *operable to* detect a measurement time at which the vital data is measured (*Column 4, lines 10-35, column 4, lines 61-67*),

wherein said sending device is *operable to* send, to said server, a set of information including the measured vital data and the measurement time (*Column 4, lines 10-35, column 4, lines 61-67*),

wherein said receiving device of said server is *operable to* receive, from said plurality of measurement instruments, a plurality of sets of information (*Figures 1-3, column 4, lines 10-67, column 5 lines 1-64. Server receives data from various user devices*),

wherein said storage device of said server is *operable to* store the plurality of sets of information, each respective set of information, including respective vital data and a respective measurement time and each respective set of information being stored in association with **at least one of** the (i) measurement position information and (ii) residence information, wherein said database making device is *operable to* store the plurality of sets of received information into said storage device and *operable to* make a database including the plurality of received sets of information, each respective set of information being stored in the database in association with **at least one of** the (i) measurement position information and (ii) residence information (*Figures 1-3, column 4, lines 10-67, column 5 lines 1-64. Database assembles and analyzes location data, pulmonary function data and time/date data*), and

said value-added information making device of said server is *operable to* process the vital data of each respective set of information stored in the data base for each respective subject identified in the database in association with a respective measurement time and *operable to* make, from the process respective vital data stored in the database for each subject identified in the database in association with the respective measurement time, value-added information indicating, using contour lines on maps, changes over time of geographical distributions of epidemic degrees of the infection indicated by each respective vital data (*Figures 1-3, column 4, lines 10-67, column 5 lines 1-64. Dynamic location, pulmonary function and time/date data received from individual users, assembled and analyzed to be representative of any*

predetermined area then provided for output to users, public and official as Asthma Cluster Type risk maps).

3. The vital data utilization system according to claim 1,

wherein said vital data measurement device is *operable to* quantitatively measure the subjects' vital data (*Column 4, lines 10-35, column 4, lines 61-67*).

4. The vital data utilization system according to claim 1,

wherein said sending device is *operable to* add, to respective sets of information, each respective set of information including respective vital data, respective measurement instrument identification information identifying a corresponding measurement instrument and *operable to* send the respective sets of information including the respective measurement identification information to said server (*Figures 1-3, column 4, lines 10-67, column 5 lines 1-64. SMS has ID and so does GPS*),

wherein said storage unit is *operable to* store the plurality of sets of information, each respective set of information including respective vital data and respective measurement instrument identification information and each respective set of information being stored in association with at least one of (i) measurement position information and (ii) residence information (*Figures 1-3, column 4, lines 10-67, column 5 lines 1-64. Database assembles and analyzes dynamic location data where GPS and SMS have ID, pulmonary function data and time/date data*), and

wherein said value-added information making device is *operable to* read out, from said storage device, **at least one of** the (i) measurement position information and (ii) residence information based on the received measurement instrument identification information received from the server, and *operable to* process the respective vital data based on at least one of the read-out information (*Figures 1-3, column 4, lines 10-67, column 5 lines 1-64. Individuals get a warning if they go to an area where the risk level is high for their particular ACT, thus the system analyzes location data and physiological data with relation to a particular user device's identity to send a warning when needed*).

5. The vital data utilization system according to claim 1,

wherein said sending device is *operable to* add, to respective sets of information, each respective set of information including respective vital data, **at least one of** the (i) measurement position information and (ii) residence information, and *operable to* send the resulting respective sets of information to said server (*Figures 1-3, column 4, lines 10-67, column 5 lines 1-64*), and

wherein said value-added information making device is *operable to* process the respective vital data, of each respective set of information received from said sending unit, based on **at least one of** the (i) measurement position information received from said sending device (*Figures 1-3, column 4, lines 10-67, column 5 lines 1-64. Dynamic location, pulmonary function and time/date data received, assembled and analyzed to be representative of any predetermined area then provided for output to users, public and ecologist*) and (ii) residence information received from said sending device.

6. The vital data utilization system according to claim 1,

wherein said database making device is *operable to* update the database each time at least one new set of information including the vital data is received(*Figures 1-3, column 4, lines 10-67, column 5 lines 1-64. Dynamic data collected, thus the database is continuously updated*), and

wherein said value-added information making device is *operable to* update the value-added information based on the updated database (*Figures 1-3, column 4, lines 10-67, column 5 lines 1-64. Dynamic data collected, thus the database and analysis is continuously updated*).

7. The vital data utilization system according to claim 1,

wherein said receiving apparatus is placed in at least one of a hospital, a public facility excluding a hospital and a house of a subject (*Figures 1-3, column 4, lines 10-67, column 5 lines 1-64. Mobile device can be carried anywhere, including public buildings*).

11. The vital data utilization system according to claim 1,

wherein said vital data measurement device is located at housing equipment in a house of a subject (*Figures 1-3, column 4, lines 10-67, column 5 lines 1-64. Mobile device can be carried anywhere*).

19. The vital data utilization system according to claim 1,

wherein said receiving apparatus is a mobile type apparatus and further includes a present position detection device *operable to* detect a present position (*Figures 1-3, column 4, lines 10-67, column 5 lines 1-64. Mobile communication tool 110 has GPS*), and

wherein said output device is *operable to* receive value-added information indicating a geographical distribution of epidemic degrees of the infection indicated by each respective vital data of respective subjects located at the detected present position and located at a peripheral part of the detected present position, and *operable to* present and output, using contour lines on a map, the geographical distribution of the epidemic degrees of the infection (*Figures 1-3, column 4, lines 10-67, column 5 lines 1-64. Individuals get a warning if they go to an area where the risk level is high for their particular ACT, thus the system analyzes location data and physiological data with relation to a particular user device's identity to send a warning when needed*).

Claims 20-23 are rejected on substantially the same basis as claims 1-6.

Claim 24 is rejected on substantially the same basis as claims 1-6 because the functions of the apparatus described in the rejection of claims 1-6 would reject the method steps of claim 24.

Claim 25 is rejected on substantially the same basis as claims 1-6 because the functions of the apparatus described in the rejection of claims 1-6 would reject the method steps of claim 25.

Claim 27 is rejected on substantially the same basis as claims 1-6.

Claim 29-30 are rejected on substantially the same basis as claims 1-6.

Claims 1-3, 5-6, 9, 15, 20, 22-23 and 29 are rejected under 35 U.S.C. 102(a) as being anticipated by Iwano et al. US Patent Publication No. 2003/0014283 (Provided in the IDS and hereinafter Iwano).

1. A vital data utilization system comprising:

a server (*Fig. 9, element 203 Server, [0042-0068]*);

a receiving apparatus*([0053]*); and

a plurality of measurement instruments, wherein said server, said receiving apparatus and said measurement instruments are connected via a communication network (*Fig. 9, element 201 clients, [0042-0068]*)

each of said measurement instruments includes:

a vital data measurement device *operable to* measure vital data of a subject, the vital sign data serving as an indicator of infection (*Fig 19, [0042-0068]. Client has various sensors to measure physiological data*); and

a sending device *operable to* send, to said server, the measured vital data (*Fig 19, [0042-0068]. Client sends data to sensor, thus it meets the limitation of a sending device*),

wherein said server includes:

a receiving device *operable to* receive a plurality of vital data including the measured vital data, the plurality of vital data being received from said plurality of measurement instruments *([0053-0055, 0059]. Data transferred to server from client, thus the limitation of a receiving device is met*);

a storage device *operable to* store each vital data of the plurality of received vital data, each vital data being stored in association with **at least one of** (i) measurement position information indicating a position of a respective measurement instrument of said plurality of measurement instruments *([0053-0055, 0059]. Data transferred to server and stored in a storage device includes location and measurement time data in relation to the vital information data*) and (ii) residence information indicating a position of a respective residence of a subject at which the respective measurement instrument is placed;

a database making device *operable to* store the plurality of received vital data into said storage device and *operable to* make a database including the plurality of received vital data, each respective vital data of the plurality received of vital data being stored in the database in association with at least one of the (i) measurement position information *([0053-0055, 0059]. Data transferred to server and stored in a storage*

device for users to browse is equivalent to creating a database) and (ii) residence information;

a value-added information making device *operable to* process each respective vital data stored in the database for each respective subject identified in the database, the processing being based on the **at least one of** the (i) measurement position information and (ii) residence information, associated with each respective vital data stored in the database and *operable to* make, from the processed vital data, value-added information indicating, using contour lines on a map, a geographical distribution of epidemic degrees of the infection indicated by each respective vital data stored in the database *([0053-0059] data transferred to server is statistically process and stored in a storage device includes location and measurement time data in relation to the vital information data, thus the limitation of a value-added information making device is met)*; and

a value-added information providing device *operable to* provide said receiving apparatus with the value-added information *([0053-0060]. Received data is statistically processed according to various set conditions and provided for a user to browse)* and

wherein said receiving apparatus includes

an output device *operable to* receive the value-added information provided by said value-added information providing device, and *operable to* present and output using contour lines on the map, the geographical distribution of the epidemic degrees of the infection *([0053-0060]. Received data is statistically processed according to various*

set conditions and displayed/outputted for a user to browse, thus the limitation of an output device is met).

2. The vital data utilization system according to claim 1,

Wherein each measurement instrument of said measurement instruments further

a clock device *operable to* detect a measurement time at which the vital data is measured *([0053]. Measurement time is part of the data received by server from client, this meets the limitation of a clock device)*,

wherein said sending device is *operable to* send, to said server, a set of information including the measured vital data and the measurement time *([0055, 0053]. Measurement time is part of the data received by server from client, in addition to the vital information)*,

wherein said receiving device of said server is *operable to* receive, from said plurality of measurement instruments, a plurality of sets of information *(Fig 19, [0042-0068]. Server receives data from numerous clients)*,

wherein said storage device of said server is *operable to* store the plurality of sets of information, each respective set of information, including respective vital data and a respective measurement time and each respective set of information being stored in association with **at least one of** the (i) measurement position information and (ii) residence information, wherein said database making device is *operable to* store the plurality of sets of received information into said storage device and *operable to* make a database including the plurality of received sets of information, each respective set of

information being stored in the database in association with **at least one of** the (i) measurement position information and (ii) residence information ([0053-0059]. Vital data in association with location and measurement time is stored in server storage device), and

said value-added information making device of said server is *operable to* process the vital data of each respective set of information stored in the data base for each respective subject identified in the database in association with a respective measurement time and *operable to* make, from the process respective vital data stored in the database for each subject identified in the database in association with the respective measurement time, value-added information indicating, using contour lines on maps, changes over time of geographical distributions of epidemic degrees of the infection indicated by each respective vital data *([0053-0060]. Received data is statistically processed according to various set conditions, including region, location and measurement time, and displayed for a user to browse. Data is collected multiple times thus changes over time can be observed by selecting different periods or measurement times*).

3. The vital data utilization system according to claim 1,

wherein said vital data measurement device is *operable to* quantitatively measure the subjects' vital data *([0047]).*

5. The vital data utilization system according to claim 1,

wherein said sending device is *operable to* add, to respective sets of information, each respective set of information including respective vital data, **at least one of** the (i) measurement position information and (ii) residence information, and *operable to* send the resulting respective sets of information to said server *([0053-0059] data transferred to server is statistically process and stored in a storage device includes location and measurement time data in relation to the vital information data)*, and

wherein said value-added information making device is *operable to* process the respective vital data, of each respective set of information received from said sending unit, based on **at least one of** the (i) measurement position information received from said sending device *([0053-0060]. Received data is statistically processed according to various set conditions, including region, location and measurement time)* and (ii) residence information.

6. The vital data utilization system according to claim 1,

wherein said database making device is *operable to* update the database each time at least one new set of information including the vital data is received *([0053-0060]. Data is collected multiple times, thus the data is updated*), and

wherein said value-added information making device is *operable to* update the value-added information based on the updated database *([0053-0060]. Received data is statistically processed according to various set conditions, including region, location and measurement time, and displayed for a user to browse. Data is collected multiple times*

thus updated data can be statistically analyzed by selecting updated/newer periods or measurement times with the region and location).

9. The vital data utilization system according to claim 1,

wherein the vital data is at least one of body temperature, blood pressure, pulse, cardiograph, oxygen saturation in blood, accelerated pulse wave velocity, a number of white blood cells, C-reactive protein concentration in blood (CRP), protein concentration in urine, glucose concentration in urine, amino acid concentration in urine and feces viscosity *(Fig 19, [0048]. ECG, Blood Pressure, Thermometer).*

15. The vital data utilization system according to claim 1,

wherein said server further includes

a charging device operable to calculate a charge for value-added information provided to said receiving apparatus (*[0062-0068]. Charging money for browsing the statistical data meets the limitation of a charging device*).

Claims 20 and 22-23 are rejected on substantially the same basis as claims 1-3 and 5-6.

Claim 29 is rejected on substantially the same basis as claims 1-3 and 5-6.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 9, 10, 11, 13, 14, 16, 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Iwano as applied to claims 1 and 15 above, and further in view of Ito et al. US Patent No. 6,572,564 (hereinafter Ito).

In regards to claim 9, Iwano discloses that vital signs measured by the sensors of the client device and transmitted over a network include diabetes patients' glucose levels measured by a blood glucose level meter *(Iwano [0002, 0047, 0058])*. Iwano fails to disclose that the measured vital signs include glucose concentration in urine. However Ito, a reference in an analogous art, discloses urine glucose sensor for collecting glucose data from diabetes patients and transferring them over a network (*Ito Column 9, lines 30-64, column 11, lines 25-32*). It would have been obvious to one of

ordinary skill in the art at the time of the invention to modify the system of Iwano by substituting the blood glucose level meter of Iwano with Ito's urine glucose sensor because both devices measure glucose/diabetes related patient data for transfer over a network and Ito teaches that the disclosed urine testing device allows any patient to create healthcare measurement data without special technical knowledge (*Ito column 4, lines 49-52*).

In regards to claim 10, Iwano modified by Ito as shown in the rejection of claim 9 above discloses a urine sensor but does not disclose that the sensor measures proteins like albumin in urine. However, Ito teaches that the biosensors for measuring different items can be exchanged depending upon the disease of the patient and in the case of a patient suffering Renal disease, a biosensor measuring albumin protein is used (*Ito column 9, lines 54-58*). It would have been obvious to one of ordinary skill in the art at the time of the invention to exchange the glucose measuring urine biosensor of Iwano modified by Ito with a biosensor measuring albumin protein in urine if a patient has Renal Disease because Ito teaches exchanging biosensors depending on the disease of the patient from whom data is being collected (*Ito Column 9, lines 54-58*).

In regards to claim 11, Iwano discloses that the client apparatus included the sensor measuring vital signs are connected to the host and server at a hospital over a network from an outside location using a telephone connection (*Iwano [0043-0045, 0095-0097]*). Iwano does not explicitly disclose where the client is located. However Ito,

a reference in an analogous art, discloses a system for collecting data from a patient located at home and then transferring it over a network to a Server/Database (*Ito column 1, lines 15-21 and Figure 7*). It would have been obvious to one of ordinary skill in the art at the time of the invention to place the client of Iwano at the patient's home as taught by Ito because the client is connected to the host and server via a network and thus can be located anywhere remote from the server and host located in the hospital, including at home.

In regards to claim 13, Iwano discloses that vital signs measured by the sensors of the client device and transmitted over a network include diabetes patients' glucose levels measured by a blood glucose level meter *(Iwano [0002, 0047, 0058])*. Iwano fails to disclose that the device is located in a toilet apparatus and the device includes a urine analyzer that measures vital data. However Ito discloses a urine glucose sensor in a toilet for collecting glucose data from diabetes patients and transferring them over a network (*Ito Column 3, lines 48-62, column 9, lines 30-64, column 11, lines 25-32*). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the system of Iwano by substituting the blood glucose level meter of Iwano with Ito's urine glucose sensor because both devices measure glucose/diabetes related patient data for transfer over a network and Ito teaches that the disclosed urine testing device allows any patient to create healthcare measurement data without special technical knowledge (*Ito column 4, lines 49-52*).

14. The vital data utilization system according to claim 13,

wherein the urine analyzer mixes urine of the subject and a reagent including an antibody that specifically combines with an analysis target component, measures turbidity of a resulting mixed solution, and measures the analysis target component in the urine (*Ito Column 19, lines 8-62*).

In regards to claim 16, Iwana discloses the apparatus according to claim 15, where subjects provide medical data over a network but does not disclose that said server further includes an incentive calculation device *operable to* calculate an incentive for each subject. However Ito, a reference in an analogous art teaches providing an insurance premium reduction support service (analogous to an incentive calculation device) that provides a patient with a certificate for discounting their insurance (incentive) based on the number of medical measurements the patient provides during a time period that do not show a progression of morbidity (*Ito Column 16, lines 3-15*). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the system of Iwano by adding the insurance premium reduction support service disclosed by Ito because it encourages the user to better manage their disease and provide frequent measurements to the system.

Claims 17 and 18 are rejected on substantially the same basis as claim 16.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Iwano in view of Ito as applied to claim 11 above, and further in view of Reed et al. US Patent No. 6,524,239 (hereinafter Reed).

In regards to claim 12, Iwano discloses that the measurement device includes a thermometer, a blood pressure meter etc. Iwano also discloses that vital signs measured by the sensors of the client device and transmitted over a network include diabetes patients' glucose levels measured by a blood glucose level meter *(Iwano [0002, 0047, 0058])*. Iwano fails to disclose that the device is located in a toilet apparatus so measurements can be taken when the subject uses the toilet. However Ito discloses a urine glucose sensor in a toilet for collecting glucose data from diabetes patients and transferring them over a network (*Ito Column 3, lines 48-62, column 9, lines 30-64, column 11, lines 25-32*). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the system of Iwano by substituting the blood glucose level meter of Iwano with Ito's urine glucose sensor located in a toilet because both devices measure glucose/diabetes related patient data for transfer over a network and Ito teaches that the disclosed urine testing device allows any patient to create healthcare measurement data without special technical knowledge (*Ito column 4, lines 49-52*).

Reed, a reference in an analogous art, discloses putting multiple sensors including temperature and pulse sensors into a toilet so measurements can be taken when a subject uses the toilet (*Reed column 5, lines 50-67*). Thus it would have been obvious to one of ordinary skill in the art at the time of the invention to further modify

Iwano modified by Ito by placing Iwano's temperature and blood pressure sensors in Ito's toilet with a biosensor as taught by Reed because this allows physiological data to be collected without relying on the subject to remember or actively participate in data acquisition (*Reed Column 2, lines 11-13*).

Response to Arguments

Applicant's arguments filed September 22, 2008 have been fully considered but they are not persuasive.

Applicants arguments against the rejection using Blants are based on claim limitations that begin with "operable to". As indicated in the beginning of the office action, the phrase "operable to" in the claim(s) may be interpreted as intended use. Intended use/functional language does not require that reference specifically teach the intended use of the element. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. It is the Examiner's position that the prior art meets all the structural limitations recited by the claims and is capable of performing the intended use limitations therefore it properly rejects the claims.

However, even if the intended use language were not present Blants would still reject the claims based on the reasons provided below.

Applicant argues that the prior art reference Blants fails to meet the following limitation claim 1, "a vital data measurement device *operable to* measure vital data of a respective subject, the vital data serving as an indicator of infection" because Blants merely teaches risk factor information collected from asthma patients using a Peak Expiratory Flow meter.

The Examiner respectfully disagrees. The Peak Expiratory Flow meter's data is vital data that is used to indicate asthmatic reactions of individual patients. Asthmatic reactions result from a variety of factors, including infections (see dictionary definition of asthma at http://www.thefreedictionary.com/Asthma), therefore the PEF data also serves as an indication of infection.

Applicant argues that the prior art reference Blants fails to meet the following limitation claim 1, "a value-added information making device *operable to* process each respective vital data stored in the database for each respective subject identified in the database, the processing being based on the **at least one of** the (i) measurement position information and (ii) residence information, associated with each respective vital data stored in the database".

The Examiner respectfully disagrees. Blants discloses that PEF data and location data (equivalent to measurement position data) from individual users is gathered in the server and analyzed with all other users sets of data (therefore each individual data set is also processed) to give individuals personalized advice based on their particular Asthma Cluster Type in the form of an Asthma Cluster Type maps

(Blants column 4, lines 42-60, column 5, lines 29-68*)*, therefore Blants rejects the limitation.

Applicant argues that the prior art reference Blants fails to meet the following limitation claim 1, "a value-added information making device . . . *operable to* make, from the processed vital data, value-added information indicating, using contour lines on a map, a geographical distribution of epidemic degrees of the infection indicated by each respective vital data stored in the database".

The Examiner respectfully disagrees. Blants discloses that individuals are given personalized advice based on their particular Asthma Cluster Type in the form of an Asthma Cluster Type maps that show high risk locations with high occurrences of Asthmatic responses (Blants column 4, lines 42-60, column 5, lines 29-68*)*. As explained earlier in the rejection, Asthma reactions are also caused by infections and a dictionary definition of "epidemic" is a widespread occurrence of a disease (www.thefreedictionary.com/epidemic) so the Asthma Cluster Type risk maps showing high occurrence of asthmatic reactions in certain areas is equivalent to value added information indicating on a map, geographic distribution of epidemic degrees of infection. Therefore Blants rejects the limitation.

Applicants arguments against the rejection using Iwano, Ito and Reed are based on claim limitations that begin with "operable to" and as explained in the beginning of the office action, they have been interpreted as intended use. It is the Examiner's position that the prior art meets all the structural limitations recited by the claims and is capable of performing the intended use limitations, therefore it properly rejects the

claims. Examiner suggests that the applicant remove the intended use language from the claims in order to patentably distinguish the claims from the applied prior art references Iwano, Ito and Reed.

Applicant is invited to request an interview to discuss suggestions to overcome the applied prior art.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SHARICK NAQI whose telephone number is (571)272-3041. The examiner can normally be reached on 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry M. Johnson III can be reached on 571-272-4768. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. N./
Examiner, Art Unit 3769

/Michael C. Astorino/
Primary Examiner, Art Unit 3769

December 21, 2008